IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Bail Appl..No. 7356 of 2007()

CR.NO.13/07 OF WADAKKANCHERRY EXCISE RANGE

: APPLICANT/ACCUSED NO.1:

CHANDRAN, S/O. NARAYANAN,
MUTHUKATTIL, MELATHIL HOUSE, PALLAR VILLAGE,
CHERUKAD DESOM, THALAPPILLY TALUK.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, REPRESENTING THE
EXCISE INSPECTOR, WADAKKANCHERRY EXCISE RANGE.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7356 of 2007

Dated this the 30th day of November, 2007

ORDER

Application for anticipatory bail. Petitioner faces allegations under the Kerala Abkari Act. He allegedly found to be in possession of 4.5 litres of arrack on 12.02.07. The petitioner has not been arrested so far. Investigation is now complete. Final report has already been filed. Cognizance has been taken. Committal proceedings are pending. The case stands posted to 05.12.2007, submits the learned Public Prosecutor .

2. The learned counsel for the petitioner submits that the petitioner is innocent. He prays that anticipatory bail may be granted to the petitioner. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the petitioner may be directed to surrender before the learned Magistrate and seek regular bail.

3. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending

proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

5. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on

merits and expeditiously - on the date of surrender itself. Needless further to say that the petitioner's claim for regular bail will have to be considered by the learned Magistrate in the light of the decision in **Sukumari v. State of Kerala** [2001(1) K.L.T 22].

6. Hand over a copy of this order to the learned counsel for the petitioners.

(R.BASANT, JUDGE)

rtr/-